

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ZACHARY THOMAS SPADA,)	
)	
Petitioner,)	
)	
v.)	Case No. 1:21-cv-158-SPB-KAP
)	
THEODORE JOHNSON, Chairman,)	
Pennsylvania Parole Board, et al.)	
)	
Respondents.)	

MEMORANDUM ORDER

The petition for a writ of habeas corpus in this case was received by the Clerk of Court on June 1, 2021. ECF No. 1. The matter was originally referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation (“R&R”) in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Rule 72 of the Local Rules of this Court. After Judge Lanzillo initially ordered service of the petition upon Respondents, ECF No. 3, the matter was transferred to U.S. Magistrate Judge Pesto for further proceedings.

On June 24, 2021, Magistrate Judge Pesto issued an R&R in which he recommended that the within petition for habeas corpus relief be dismissed in accordance with 28 U.S.C. §2243 and Rule 4 of the Rules Governing 2254 Cases in the United States District Courts. Judge Pesto’s recommendation of dismissal was based on his conclusions that Petitioner’s §2254 claims are not exhausted and, in any event, §2254 does not provide an appropriate remedy for the relief that Petitioner is seeking. ECF No. [5]. Judge Pesto also recommended that a certificate of appealability be denied. *Id.* Based upon these recommendations, he directed that the Clerk add Respondents’ counsel to the docket for notice purposes only, as Respondents were essentially

relieved of any duty to file a response to the petition. Id. Objections to the R&R were due on or before July 12, 2021, but none were filed or received as of that date.

Notwithstanding the pendency of the R&R and Judge Pesto's recommendation of dismissal, the Respondents filed their answer to the instant petition on July 28, 2021, likely as a precautionary matter in the event this Court did not adopt Judge Pesto's recommendations. ECF Nos. 8 and 9.

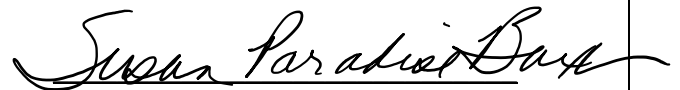
On August 3, 2021, this Court received a filing from the Petitioner asking that the R&R be vacated. ECF No. 10. Petitioner expressed confusion concerning Magistrate Judge Pesto's recommendation that the case be dismissed. He apparently believes that the R&R was issued in error, given that: (a) Judge Lanzillo was originally assigned to the matter, (b) service had previously been ordered, and (c) Respondents have replied to the petition for habeas corpus relief.

Although belatedly filed, Petitioner's letter has been fully considered by this Court and construed as "objections," which is how they have been docketed. Petitioner is advised that the referral of this matter was transferred from Magistrate Judge Lanzillo to Magistrate Judge Pesto as a matter of routine court administration. Service was ordered by Judge Lanzillo prior to a full review of the petition, which was performed by Judge Pesto. After reviewing the petition, Judge Pesto concluded that dismissal was appropriate for the reasons set forth in the R&R. ECF No. 5. Respondents were excused from responding to the petition but did so anyway, evidently out of an abundance of caution. The matter is now properly before the undersigned for *de novo* consideration of the Report and Recommendation and all related filings. To that end, after *de novo* review of the petition and documents in the case, together with the Report and Recommendation and Petitioner's objections thereto, the following order is entered:

AND NOW, this 12th day of August, 2021, IT IS ORDERED that the within petition for a writ of habeas corpus, ECF No. [1], shall be, and hereby is, DISMISSED without prejudice so that Petitioner may have an opportunity to exhaust his §2254 claims or, alternatively, seek redress through a separately filed federal civil rights lawsuit.

IT IS FURTHER ORDERED that the Report and Recommendation of Magistrate Judge Keith A. Pesto, issued on June 24, 2021, ECF No. [5], is hereby adopted as the opinion of this Court, and Petitioner's objections to the Report and Recommendation are OVERRULED. Because jurists of reason would not find it debatable whether Petitioner failed state a cognizable basis for relief under 28 U.S.C. §2254, IT IS HEREBY ORDERED that a certificate of appealability is DENIED.

As there are no further matters pending before the Court relative to the instant petition, the Clerk is directed to mark this case "CLOSED."



SUSAN PARADISE BAXTER
United States District Judge

cm: Zachary Thomas Spada
NX7892
SCI Houtzdale
PO Box 1000
209 Institution Drive
Houtzdale, PA 16698-1000
(via U.S. Mail)

The Honorable Keith A. Pesto (via CM/ECF)